



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB0794

Introduced 2/9/2009, by Rep. Dr. Jim Durkin

SYNOPSIS AS INTRODUCED:

720 ILCS 5/24-1.6

720 ILCS 5/24-1.8 new

730 ILCS 5/5-5-3

from Ch. 38, par. 1005-5-3

Amends the Criminal Code of 1961 and the Unified Code of Corrections. Creates the offense of unlawful possession of a firearm by a street gang member. Provides that a person commits the offense if he or she (1) possesses, carries, or conceals on or about his or her person a firearm and firearm ammunition while on any street, road, alley, gangway, sidewalk, or any other lands, except when inside his or her own abode or inside his or her fixed place of business, and has not been issued a currently valid Firearm Owner's Identification Card and is a member of a street gang; or (2) possesses or carries in any vehicle a firearm and firearm ammunition which are both immediately accessible at the time of the offense while on any street, road, alley, or any other lands, except when inside his or her own abode or garage, and has not been issued a currently valid Firearm Owner's Identification Card and is a member of a street gang. Provides that unlawful possession of a firearm by a street gang member is a Class 2 felony for which the person, if sentenced to a term of imprisonment, shall be sentenced to no less than 3 years and no more than 10 years. Provides that a period of probation, a term of periodic imprisonment or conditional discharge shall not be imposed for the offense of unlawful possession of a firearm by a street gang member when the firearm was loaded or contained firearm ammunition and the court shall sentence the offender to not less than the minimum term of imprisonment authorized for the Class 2 felony. Effective immediately.

LRB096 05616 RLC 15682 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Criminal Code of 1961 is amended by changing
5 Section 24-1.6 and by adding Section 24-1.8 as follows:

6 (720 ILCS 5/24-1.6)

7 Sec. 24-1.6. Aggravated unlawful use of a weapon.

8 (a) A person commits the offense of aggravated unlawful use
9 of a weapon when he or she knowingly:

10 (1) Carries on or about his or her person or in any
11 vehicle or concealed on or about his or her person except
12 when on his or her land or in his or her abode or fixed
13 place of business any pistol, revolver, stun gun or taser
14 or other firearm; or

15 (2) Carries or possesses on or about his or her person,
16 upon any public street, alley, or other public lands within
17 the corporate limits of a city, village or incorporated
18 town, except when an invitee thereon or therein, for the
19 purpose of the display of such weapon or the lawful
20 commerce in weapons, or except when on his or her own land
21 or in his or her own abode or fixed place of business, any
22 pistol, revolver, stun gun or taser or other firearm; and

23 (3) One of the following factors is present:

1 (A) the firearm possessed was uncased, loaded and
2 immediately accessible at the time of the offense; or

3 (B) the firearm possessed was uncased, unloaded
4 and the ammunition for the weapon was immediately
5 accessible at the time of the offense; or

6 (C) the person possessing the firearm has not been
7 issued a currently valid Firearm Owner's
8 Identification Card; or

9 (D) the person possessing the weapon was
10 previously adjudicated a delinquent minor under the
11 Juvenile Court Act of 1987 for an act that if committed
12 by an adult would be a felony; or

13 (E) the person possessing the weapon was engaged in
14 a misdemeanor violation of the Cannabis Control Act, in
15 a misdemeanor violation of the Illinois Controlled
16 Substances Act, or in a misdemeanor violation of the
17 Methamphetamine Control and Community Protection Act;
18 or

19 (F) (blank) ~~the person possessing the weapon is a~~
20 ~~member of a street gang or is engaged in street gang~~
21 ~~related activity, as defined in Section 10 of the~~
22 ~~Illinois Streetgang Terrorism Omnibus Prevention Act;~~
23 or

24 (G) the person possessing the weapon had a order of
25 protection issued against him or her within the
26 previous 2 years; or

1 (H) the person possessing the weapon was engaged in
2 the commission or attempted commission of a
3 misdemeanor involving the use or threat of violence
4 against the person or property of another; or

5 (I) the person possessing the weapon was under 21
6 years of age and in possession of a handgun as defined
7 in Section 24-3, unless the person under 21 is engaged
8 in lawful activities under the Wildlife Code or
9 described in subsection 24-2(b)(1), (b)(3), or
10 24-2(f).

11 (b) "Stun gun or taser" as used in this Section has the
12 same definition given to it in Section 24-1 of this Code.

13 (c) This Section does not apply to or affect the
14 transportation or possession of weapons that:

15 (i) are broken down in a non-functioning state; or

16 (ii) are not immediately accessible; or

17 (iii) are unloaded and enclosed in a case, firearm
18 carrying box, shipping box, or other container by a
19 person who has been issued a currently valid Firearm
20 Owner's Identification Card.

21 (d) Sentence. Aggravated unlawful use of a weapon is a
22 Class 4 felony; a second or subsequent offense is a Class 2
23 felony for which the person shall be sentenced to a term of
24 imprisonment of not less than 3 years and not more than 7
25 years. Aggravated unlawful use of a weapon by a person who has
26 been previously convicted of a felony in this State or another

1 jurisdiction is a Class 2 felony for which the person shall be
2 sentenced to a term of imprisonment of not less than 3 years
3 and not more than 7 years. Aggravated unlawful use of a weapon
4 while wearing or in possession of body armor as defined in
5 Section 33F-1 by a person who has not been issued a valid
6 Firearms Owner's Identification Card in accordance with
7 Section 5 of the Firearm Owners Identification Card Act is a
8 Class X felony. The possession of each firearm in violation of
9 this Section constitutes a single and separate violation.

10 (Source: P.A. 94-72, eff. 1-1-06; 94-284, eff. 7-21-05; 94-556,
11 eff. 9-11-05; 95-331, eff. 8-21-07.)

12 (720 ILCS 5/24-1.8 new)

13 Sec. 24-1.8. Unlawful possession of a firearm by a street
14 gang member.

15 (a) A person commits unlawful possession of a firearm by a
16 street gang member when he or she knowingly:

17 (1) possesses, carries, or conceals on or about his or
18 her person a firearm and firearm ammunition while on any
19 street, road, alley, gangway, sidewalk, or any other lands,
20 except when inside his or her own abode or inside his or
21 her fixed place of business, and has not been issued a
22 currently valid Firearm Owner's Identification Card and is
23 a member of a street gang; or

24 (2) possesses or carries in any vehicle a firearm and
25 firearm ammunition which are both immediately accessible

1 at the time of the offense while on any street, road,
2 alley, or any other lands, except when inside his or her
3 own abode or garage, and has not been issued a currently
4 valid Firearm Owner's Identification Card and is a member
5 of a street gang.

6 (b) Unlawful possession of a firearm by a street gang
7 member is a Class 2 felony for which the person, if sentenced
8 to a term of imprisonment, shall be sentenced to no less than 3
9 years and no more than 10 years. A period of probation, a term
10 of periodic imprisonment or conditional discharge shall not be
11 imposed for the offense of unlawful possession of a firearm by
12 a street gang member when the firearm was loaded or contained
13 firearm ammunition and the court shall sentence the offender to
14 not less than the minimum term of imprisonment authorized for
15 the Class 2 felony.

16 (c) For purposes of this Section:

17 "Street gang" or "gang" means any combination,
18 confederation, alliance, network, conspiracy in law or in
19 fact, of 3 or more persons with an established hierarchy
20 that, through its membership or through the agency of any
21 member, engages in a course or pattern of criminal
22 activity.

23 "Street gang member" or "gang member" means any person
24 who actually and in fact belongs to a gang.

25 "Firearm" means any pistol, revolver, rifle, shotgun,
26 or any device by whatever name which is designed to expel a

1 projectile or projectiles by the action of an explosion,
2 expansion of gas, or escape of gas.

3 "Firearm ammunition" means any self-contained
4 cartridge or shotgun shell, by whatever name known, which
5 is designed to be used or adaptable for use in a firearm.

6 Section 10. The Unified Code of Corrections is amended by
7 changing Section 5-5-3 as follows:

8 (730 ILCS 5/5-5-3) (from Ch. 38, par. 1005-5-3)

9 Sec. 5-5-3. Disposition.

10 (a) Except as provided in Section 11-501 of the Illinois
11 Vehicle Code, every person convicted of an offense shall be
12 sentenced as provided in this Section.

13 (b) The following options shall be appropriate
14 dispositions, alone or in combination, for all felonies and
15 misdemeanors other than those identified in subsection (c) of
16 this Section:

17 (1) A period of probation.

18 (2) A term of periodic imprisonment.

19 (3) A term of conditional discharge.

20 (4) A term of imprisonment.

21 (5) An order directing the offender to clean up and
22 repair the damage, if the offender was convicted under
23 paragraph (h) of Section 21-1 of the Criminal Code of 1961
24 (now repealed).

1 (6) A fine.

2 (7) An order directing the offender to make restitution
3 to the victim under Section 5-5-6 of this Code.

4 (8) A sentence of participation in a county impact
5 incarceration program under Section 5-8-1.2 of this Code.

6 (9) A term of imprisonment in combination with a term
7 of probation when the offender has been admitted into a
8 drug court program under Section 20 of the Drug Court
9 Treatment Act.

10 Neither a fine nor restitution shall be the sole
11 disposition for a felony and either or both may be imposed only
12 in conjunction with another disposition.

13 (c) (1) When a defendant is found guilty of first degree
14 murder the State may either seek a sentence of imprisonment
15 under Section 5-8-1 of this Code, or where appropriate seek
16 a sentence of death under Section 9-1 of the Criminal Code
17 of 1961.

18 (2) A period of probation, a term of periodic
19 imprisonment or conditional discharge shall not be imposed
20 for the following offenses. The court shall sentence the
21 offender to not less than the minimum term of imprisonment
22 set forth in this Code for the following offenses, and may
23 order a fine or restitution or both in conjunction with
24 such term of imprisonment:

25 (A) First degree murder where the death penalty is
26 not imposed.

1 (B) Attempted first degree murder.

2 (C) A Class X felony.

3 (D) A violation of Section 401.1 or 407 of the
4 Illinois Controlled Substances Act, or a violation of
5 subdivision (c) (1), (c) (1.5), or (c) (2) of Section 401
6 of that Act which relates to more than 5 grams of a
7 substance containing heroin, cocaine, fentanyl, or an
8 analog thereof.

9 (E) A violation of Section 5.1 or 9 of the Cannabis
10 Control Act.

11 (F) A Class 2 or greater felony if the offender had
12 been convicted of a Class 2 or greater felony within 10
13 years of the date on which the offender committed the
14 offense for which he or she is being sentenced, except
15 as otherwise provided in Section 40-10 of the
16 Alcoholism and Other Drug Abuse and Dependency Act.

17 (F-5) A violation of Section 24-1, 24-1.1, or
18 24-1.6 of the Criminal Code of 1961 for which
19 imprisonment is prescribed in those Sections.

20 (G) Residential burglary, except as otherwise
21 provided in Section 40-10 of the Alcoholism and Other
22 Drug Abuse and Dependency Act.

23 (H) Criminal sexual assault.

24 (I) Aggravated battery of a senior citizen.

25 (J) A forcible felony if the offense was related to
26 the activities of an organized gang.

1 Before July 1, 1994, for the purposes of this
2 paragraph, "organized gang" means an association of 5
3 or more persons, with an established hierarchy, that
4 encourages members of the association to perpetrate
5 crimes or provides support to the members of the
6 association who do commit crimes.

7 Beginning July 1, 1994, for the purposes of this
8 paragraph, "organized gang" has the meaning ascribed
9 to it in Section 10 of the Illinois Streetgang
10 Terrorism Omnibus Prevention Act.

11 (K) Vehicular hijacking.

12 (L) A second or subsequent conviction for the
13 offense of hate crime when the underlying offense upon
14 which the hate crime is based is felony aggravated
15 assault or felony mob action.

16 (M) A second or subsequent conviction for the
17 offense of institutional vandalism if the damage to the
18 property exceeds \$300.

19 (N) A Class 3 felony violation of paragraph (1) of
20 subsection (a) of Section 2 of the Firearm Owners
21 Identification Card Act.

22 (O) A violation of Section 12-6.1 of the Criminal
23 Code of 1961.

24 (P) A violation of paragraph (1), (2), (3), (4),
25 (5), or (7) of subsection (a) of Section 11-20.1 of the
26 Criminal Code of 1961.

1 (Q) A violation of Section 20-1.2 or 20-1.3 of the
2 Criminal Code of 1961.

3 (R) A violation of Section 24-3A of the Criminal
4 Code of 1961.

5 (S) (Blank).

6 (T) A second or subsequent violation of the
7 Methamphetamine Control and Community Protection Act.

8 (U) A second or subsequent violation of Section
9 6-303 of the Illinois Vehicle Code committed while his
10 or her driver's license, permit, or privilege was
11 revoked because of a violation of Section 9-3 of the
12 Criminal Code of 1961, relating to the offense of
13 reckless homicide, or a similar provision of a law of
14 another state.

15 (V) A violation of paragraph (4) of subsection (c)
16 of Section 11-20.3 of the Criminal Code of 1961.

17 (W) A violation of Section 24-3.5 of the Criminal
18 Code of 1961.

19 (X) A conviction for unlawful possession of a
20 firearm by a street gang member when the firearm was
21 loaded or contained firearm ammunition.

22 (3) (Blank).

23 (4) A minimum term of imprisonment of not less than 10
24 consecutive days or 30 days of community service shall be
25 imposed for a violation of paragraph (c) of Section 6-303
26 of the Illinois Vehicle Code.

1 (4.1) (Blank).

2 (4.2) Except as provided in paragraphs (4.3) and (4.8)
3 of this subsection (c), a minimum of 100 hours of community
4 service shall be imposed for a second violation of Section
5 6-303 of the Illinois Vehicle Code.

6 (4.3) A minimum term of imprisonment of 30 days or 300
7 hours of community service, as determined by the court,
8 shall be imposed for a second violation of subsection (c)
9 of Section 6-303 of the Illinois Vehicle Code.

10 (4.4) Except as provided in paragraphs (4.5), (4.6),
11 and (4.9) of this subsection (c), a minimum term of
12 imprisonment of 30 days or 300 hours of community service,
13 as determined by the court, shall be imposed for a third or
14 subsequent violation of Section 6-303 of the Illinois
15 Vehicle Code.

16 (4.5) A minimum term of imprisonment of 30 days shall
17 be imposed for a third violation of subsection (c) of
18 Section 6-303 of the Illinois Vehicle Code.

19 (4.6) Except as provided in paragraph (4.10) of this
20 subsection (c), a minimum term of imprisonment of 180 days
21 shall be imposed for a fourth or subsequent violation of
22 subsection (c) of Section 6-303 of the Illinois Vehicle
23 Code.

24 (4.7) A minimum term of imprisonment of not less than
25 30 consecutive days, or 300 hours of community service,
26 shall be imposed for a violation of subsection (a-5) of

1 Section 6-303 of the Illinois Vehicle Code, as provided in
2 subsection (b-5) of that Section.

3 (4.8) A mandatory prison sentence shall be imposed for
4 a second violation of subsection (a-5) of Section 6-303 of
5 the Illinois Vehicle Code, as provided in subsection (c-5)
6 of that Section. The person's driving privileges shall be
7 revoked for a period of not less than 5 years from the date
8 of his or her release from prison.

9 (4.9) A mandatory prison sentence of not less than 4
10 and not more than 15 years shall be imposed for a third
11 violation of subsection (a-5) of Section 6-303 of the
12 Illinois Vehicle Code, as provided in subsection (d-2.5) of
13 that Section. The person's driving privileges shall be
14 revoked for the remainder of his or her life.

15 (4.10) A mandatory prison sentence for a Class 1 felony
16 shall be imposed, and the person shall be eligible for an
17 extended term sentence, for a fourth or subsequent
18 violation of subsection (a-5) of Section 6-303 of the
19 Illinois Vehicle Code, as provided in subsection (d-3.5) of
20 that Section. The person's driving privileges shall be
21 revoked for the remainder of his or her life.

22 (5) The court may sentence an offender convicted of a
23 business offense or a petty offense or a corporation or
24 unincorporated association convicted of any offense to:

25 (A) a period of conditional discharge;

26 (B) a fine;

1 (C) make restitution to the victim under Section
2 5-5-6 of this Code.

3 (5.1) In addition to any penalties imposed under
4 paragraph (5) of this subsection (c), and except as
5 provided in paragraph (5.2) or (5.3), a person convicted of
6 violating subsection (c) of Section 11-907 of the Illinois
7 Vehicle Code shall have his or her driver's license,
8 permit, or privileges suspended for at least 90 days but
9 not more than one year, if the violation resulted in damage
10 to the property of another person.

11 (5.2) In addition to any penalties imposed under
12 paragraph (5) of this subsection (c), and except as
13 provided in paragraph (5.3), a person convicted of
14 violating subsection (c) of Section 11-907 of the Illinois
15 Vehicle Code shall have his or her driver's license,
16 permit, or privileges suspended for at least 180 days but
17 not more than 2 years, if the violation resulted in injury
18 to another person.

19 (5.3) In addition to any penalties imposed under
20 paragraph (5) of this subsection (c), a person convicted of
21 violating subsection (c) of Section 11-907 of the Illinois
22 Vehicle Code shall have his or her driver's license,
23 permit, or privileges suspended for 2 years, if the
24 violation resulted in the death of another person.

25 (5.4) In addition to any penalties imposed under
26 paragraph (5) of this subsection (c), a person convicted of

1 violating Section 3-707 of the Illinois Vehicle Code shall
2 have his or her driver's license, permit, or privileges
3 suspended for 3 months and until he or she has paid a
4 reinstatement fee of \$100.

5 (5.5) In addition to any penalties imposed under
6 paragraph (5) of this subsection (c), a person convicted of
7 violating Section 3-707 of the Illinois Vehicle Code during
8 a period in which his or her driver's license, permit, or
9 privileges were suspended for a previous violation of that
10 Section shall have his or her driver's license, permit, or
11 privileges suspended for an additional 6 months after the
12 expiration of the original 3-month suspension and until he
13 or she has paid a reinstatement fee of \$100.

14 (6) In no case shall an offender be eligible for a
15 disposition of probation or conditional discharge for a
16 Class 1 felony committed while he was serving a term of
17 probation or conditional discharge for a felony.

18 (7) When a defendant is adjudged a habitual criminal
19 under Article 33B of the Criminal Code of 1961, the court
20 shall sentence the defendant to a term of natural life
21 imprisonment.

22 (8) When a defendant, over the age of 21 years, is
23 convicted of a Class 1 or Class 2 felony, after having
24 twice been convicted in any state or federal court of an
25 offense that contains the same elements as an offense now
26 classified in Illinois as a Class 2 or greater Class felony

1 and such charges are separately brought and tried and arise
2 out of different series of acts, such defendant shall be
3 sentenced as a Class X offender. This paragraph shall not
4 apply unless (1) the first felony was committed after the
5 effective date of this amendatory Act of 1977; and (2) the
6 second felony was committed after conviction on the first;
7 and (3) the third felony was committed after conviction on
8 the second. A person sentenced as a Class X offender under
9 this paragraph is not eligible to apply for treatment as a
10 condition of probation as provided by Section 40-10 of the
11 Alcoholism and Other Drug Abuse and Dependency Act.

12 (9) A defendant convicted of a second or subsequent
13 offense of ritualized abuse of a child may be sentenced to
14 a term of natural life imprisonment.

15 (10) (Blank).

16 (11) The court shall impose a minimum fine of \$1,000
17 for a first offense and \$2,000 for a second or subsequent
18 offense upon a person convicted of or placed on supervision
19 for battery when the individual harmed was a sports
20 official or coach at any level of competition and the act
21 causing harm to the sports official or coach occurred
22 within an athletic facility or within the immediate
23 vicinity of the athletic facility at which the sports
24 official or coach was an active participant of the athletic
25 contest held at the athletic facility. For the purposes of
26 this paragraph (11), "sports official" means a person at an

1 athletic contest who enforces the rules of the contest,
2 such as an umpire or referee; "athletic facility" means an
3 indoor or outdoor playing field or recreational area where
4 sports activities are conducted; and "coach" means a person
5 recognized as a coach by the sanctioning authority that
6 conducted the sporting event.

7 (12) A person may not receive a disposition of court
8 supervision for a violation of Section 5-16 of the Boat
9 Registration and Safety Act if that person has previously
10 received a disposition of court supervision for a violation
11 of that Section.

12 (13) A person convicted of or placed on court
13 supervision for an assault or aggravated assault when the
14 victim and the offender are family or household members as
15 defined in Section 103 of the Illinois Domestic Violence
16 Act of 1986 or convicted of domestic battery or aggravated
17 domestic battery may be required to attend a Partner Abuse
18 Intervention Program under protocols set forth by the
19 Illinois Department of Human Services under such terms and
20 conditions imposed by the court. The costs of such classes
21 shall be paid by the offender.

22 (d) In any case in which a sentence originally imposed is
23 vacated, the case shall be remanded to the trial court. The
24 trial court shall hold a hearing under Section 5-4-1 of the
25 Unified Code of Corrections which may include evidence of the
26 defendant's life, moral character and occupation during the

1 time since the original sentence was passed. The trial court
2 shall then impose sentence upon the defendant. The trial court
3 may impose any sentence which could have been imposed at the
4 original trial subject to Section 5-5-4 of the Unified Code of
5 Corrections. If a sentence is vacated on appeal or on
6 collateral attack due to the failure of the trier of fact at
7 trial to determine beyond a reasonable doubt the existence of a
8 fact (other than a prior conviction) necessary to increase the
9 punishment for the offense beyond the statutory maximum
10 otherwise applicable, either the defendant may be re-sentenced
11 to a term within the range otherwise provided or, if the State
12 files notice of its intention to again seek the extended
13 sentence, the defendant shall be afforded a new trial.

14 (e) In cases where prosecution for aggravated criminal
15 sexual abuse under Section 12-16 of the Criminal Code of 1961
16 results in conviction of a defendant who was a family member of
17 the victim at the time of the commission of the offense, the
18 court shall consider the safety and welfare of the victim and
19 may impose a sentence of probation only where:

20 (1) the court finds (A) or (B) or both are appropriate:

21 (A) the defendant is willing to undergo a court
22 approved counseling program for a minimum duration of 2
23 years; or

24 (B) the defendant is willing to participate in a
25 court approved plan including but not limited to the
26 defendant's:

- 1 (i) removal from the household;
2 (ii) restricted contact with the victim;
3 (iii) continued financial support of the
4 family;
5 (iv) restitution for harm done to the victim;
6 and
7 (v) compliance with any other measures that
8 the court may deem appropriate; and

9 (2) the court orders the defendant to pay for the
10 victim's counseling services, to the extent that the court
11 finds, after considering the defendant's income and
12 assets, that the defendant is financially capable of paying
13 for such services, if the victim was under 18 years of age
14 at the time the offense was committed and requires
15 counseling as a result of the offense.

16 Probation may be revoked or modified pursuant to Section
17 5-6-4; except where the court determines at the hearing that
18 the defendant violated a condition of his or her probation
19 restricting contact with the victim or other family members or
20 commits another offense with the victim or other family
21 members, the court shall revoke the defendant's probation and
22 impose a term of imprisonment.

23 For the purposes of this Section, "family member" and
24 "victim" shall have the meanings ascribed to them in Section
25 12-12 of the Criminal Code of 1961.

26 (f) This Article shall not deprive a court in other

1 proceedings to order a forfeiture of property, to suspend or
2 cancel a license, to remove a person from office, or to impose
3 any other civil penalty.

4 (g) Whenever a defendant is convicted of an offense under
5 Sections 11-14, 11-15, 11-15.1, 11-16, 11-17, 11-18, 11-18.1,
6 11-19, 11-19.1, 11-19.2, 12-13, 12-14, 12-14.1, 12-15 or 12-16
7 of the Criminal Code of 1961, the defendant shall undergo
8 medical testing to determine whether the defendant has any
9 sexually transmissible disease, including a test for infection
10 with human immunodeficiency virus (HIV) or any other identified
11 causative agent of acquired immunodeficiency syndrome (AIDS).
12 Any such medical test shall be performed only by appropriately
13 licensed medical practitioners and may include an analysis of
14 any bodily fluids as well as an examination of the defendant's
15 person. Except as otherwise provided by law, the results of
16 such test shall be kept strictly confidential by all medical
17 personnel involved in the testing and must be personally
18 delivered in a sealed envelope to the judge of the court in
19 which the conviction was entered for the judge's inspection in
20 camera. Acting in accordance with the best interests of the
21 victim and the public, the judge shall have the discretion to
22 determine to whom, if anyone, the results of the testing may be
23 revealed. The court shall notify the defendant of the test
24 results. The court shall also notify the victim if requested by
25 the victim, and if the victim is under the age of 15 and if
26 requested by the victim's parents or legal guardian, the court

1 shall notify the victim's parents or legal guardian of the test
2 results. The court shall provide information on the
3 availability of HIV testing and counseling at Department of
4 Public Health facilities to all parties to whom the results of
5 the testing are revealed and shall direct the State's Attorney
6 to provide the information to the victim when possible. A
7 State's Attorney may petition the court to obtain the results
8 of any HIV test administered under this Section, and the court
9 shall grant the disclosure if the State's Attorney shows it is
10 relevant in order to prosecute a charge of criminal
11 transmission of HIV under Section 12-16.2 of the Criminal Code
12 of 1961 against the defendant. The court shall order that the
13 cost of any such test shall be paid by the county and may be
14 taxed as costs against the convicted defendant.

15 (g-5) When an inmate is tested for an airborne communicable
16 disease, as determined by the Illinois Department of Public
17 Health including but not limited to tuberculosis, the results
18 of the test shall be personally delivered by the warden or his
19 or her designee in a sealed envelope to the judge of the court
20 in which the inmate must appear for the judge's inspection in
21 camera if requested by the judge. Acting in accordance with the
22 best interests of those in the courtroom, the judge shall have
23 the discretion to determine what if any precautions need to be
24 taken to prevent transmission of the disease in the courtroom.

25 (h) Whenever a defendant is convicted of an offense under
26 Section 1 or 2 of the Hypodermic Syringes and Needles Act, the

1 defendant shall undergo medical testing to determine whether
2 the defendant has been exposed to human immunodeficiency virus
3 (HIV) or any other identified causative agent of acquired
4 immunodeficiency syndrome (AIDS). Except as otherwise provided
5 by law, the results of such test shall be kept strictly
6 confidential by all medical personnel involved in the testing
7 and must be personally delivered in a sealed envelope to the
8 judge of the court in which the conviction was entered for the
9 judge's inspection in camera. Acting in accordance with the
10 best interests of the public, the judge shall have the
11 discretion to determine to whom, if anyone, the results of the
12 testing may be revealed. The court shall notify the defendant
13 of a positive test showing an infection with the human
14 immunodeficiency virus (HIV). The court shall provide
15 information on the availability of HIV testing and counseling
16 at Department of Public Health facilities to all parties to
17 whom the results of the testing are revealed and shall direct
18 the State's Attorney to provide the information to the victim
19 when possible. A State's Attorney may petition the court to
20 obtain the results of any HIV test administered under this
21 Section, and the court shall grant the disclosure if the
22 State's Attorney shows it is relevant in order to prosecute a
23 charge of criminal transmission of HIV under Section 12-16.2 of
24 the Criminal Code of 1961 against the defendant. The court
25 shall order that the cost of any such test shall be paid by the
26 county and may be taxed as costs against the convicted

1 defendant.

2 (i) All fines and penalties imposed under this Section for
3 any violation of Chapters 3, 4, 6, and 11 of the Illinois
4 Vehicle Code, or a similar provision of a local ordinance, and
5 any violation of the Child Passenger Protection Act, or a
6 similar provision of a local ordinance, shall be collected and
7 disbursed by the circuit clerk as provided under Section 27.5
8 of the Clerks of Courts Act.

9 (j) In cases when prosecution for any violation of Section
10 11-6, 11-8, 11-9, 11-11, 11-14, 11-15, 11-15.1, 11-16, 11-17,
11 11-17.1, 11-18, 11-18.1, 11-19, 11-19.1, 11-19.2, 11-20.1,
12 11-21, 12-13, 12-14, 12-14.1, 12-15, or 12-16 of the Criminal
13 Code of 1961, any violation of the Illinois Controlled
14 Substances Act, any violation of the Cannabis Control Act, or
15 any violation of the Methamphetamine Control and Community
16 Protection Act results in conviction, a disposition of court
17 supervision, or an order of probation granted under Section 10
18 of the Cannabis Control Act, Section 410 of the Illinois
19 Controlled Substance Act, or Section 70 of the Methamphetamine
20 Control and Community Protection Act of a defendant, the court
21 shall determine whether the defendant is employed by a facility
22 or center as defined under the Child Care Act of 1969, a public
23 or private elementary or secondary school, or otherwise works
24 with children under 18 years of age on a daily basis. When a
25 defendant is so employed, the court shall order the Clerk of
26 the Court to send a copy of the judgment of conviction or order

1 of supervision or probation to the defendant's employer by
2 certified mail. If the employer of the defendant is a school,
3 the Clerk of the Court shall direct the mailing of a copy of
4 the judgment of conviction or order of supervision or probation
5 to the appropriate regional superintendent of schools. The
6 regional superintendent of schools shall notify the State Board
7 of Education of any notification under this subsection.

8 (j-5) A defendant at least 17 years of age who is convicted
9 of a felony and who has not been previously convicted of a
10 misdemeanor or felony and who is sentenced to a term of
11 imprisonment in the Illinois Department of Corrections shall as
12 a condition of his or her sentence be required by the court to
13 attend educational courses designed to prepare the defendant
14 for a high school diploma and to work toward a high school
15 diploma or to work toward passing the high school level Test of
16 General Educational Development (GED) or to work toward
17 completing a vocational training program offered by the
18 Department of Corrections. If a defendant fails to complete the
19 educational training required by his or her sentence during the
20 term of incarceration, the Prisoner Review Board shall, as a
21 condition of mandatory supervised release, require the
22 defendant, at his or her own expense, to pursue a course of
23 study toward a high school diploma or passage of the GED test.
24 The Prisoner Review Board shall revoke the mandatory supervised
25 release of a defendant who wilfully fails to comply with this
26 subsection (j-5) upon his or her release from confinement in a

1 penal institution while serving a mandatory supervised release
2 term; however, the inability of the defendant after making a
3 good faith effort to obtain financial aid or pay for the
4 educational training shall not be deemed a wilful failure to
5 comply. The Prisoner Review Board shall recommit the defendant
6 whose mandatory supervised release term has been revoked under
7 this subsection (j-5) as provided in Section 3-3-9. This
8 subsection (j-5) does not apply to a defendant who has a high
9 school diploma or has successfully passed the GED test. This
10 subsection (j-5) does not apply to a defendant who is
11 determined by the court to be developmentally disabled or
12 otherwise mentally incapable of completing the educational or
13 vocational program.

14 (k) A court may not impose a sentence or disposition for a
15 felony or misdemeanor that requires the defendant to be
16 implanted or injected with or to use any form of birth control.

17 (l) (A) Except as provided in paragraph (C) of subsection
18 (l), whenever a defendant, who is an alien as defined by
19 the Immigration and Nationality Act, is convicted of any
20 felony or misdemeanor offense, the court after sentencing
21 the defendant may, upon motion of the State's Attorney,
22 hold sentence in abeyance and remand the defendant to the
23 custody of the Attorney General of the United States or his
24 or her designated agent to be deported when:

25 (1) a final order of deportation has been issued
26 against the defendant pursuant to proceedings under

1 the Immigration and Nationality Act, and

2 (2) the deportation of the defendant would not
3 deprecate the seriousness of the defendant's conduct
4 and would not be inconsistent with the ends of justice.

5 Otherwise, the defendant shall be sentenced as
6 provided in this Chapter V.

7 (B) If the defendant has already been sentenced for a
8 felony or misdemeanor offense, or has been placed on
9 probation under Section 10 of the Cannabis Control Act,
10 Section 410 of the Illinois Controlled Substances Act, or
11 Section 70 of the Methamphetamine Control and Community
12 Protection Act, the court may, upon motion of the State's
13 Attorney to suspend the sentence imposed, commit the
14 defendant to the custody of the Attorney General of the
15 United States or his or her designated agent when:

16 (1) a final order of deportation has been issued
17 against the defendant pursuant to proceedings under
18 the Immigration and Nationality Act, and

19 (2) the deportation of the defendant would not
20 deprecate the seriousness of the defendant's conduct
21 and would not be inconsistent with the ends of justice.

22 (C) This subsection (1) does not apply to offenders who
23 are subject to the provisions of paragraph (2) of
24 subsection (a) of Section 3-6-3.

25 (D) Upon motion of the State's Attorney, if a defendant
26 sentenced under this Section returns to the jurisdiction of

1 the United States, the defendant shall be recommitted to
2 the custody of the county from which he or she was
3 sentenced. Thereafter, the defendant shall be brought
4 before the sentencing court, which may impose any sentence
5 that was available under Section 5-5-3 at the time of
6 initial sentencing. In addition, the defendant shall not be
7 eligible for additional good conduct credit for
8 meritorious service as provided under Section 3-6-6.

9 (m) A person convicted of criminal defacement of property
10 under Section 21-1.3 of the Criminal Code of 1961, in which the
11 property damage exceeds \$300 and the property damaged is a
12 school building, shall be ordered to perform community service
13 that may include cleanup, removal, or painting over the
14 defacement.

15 (n) The court may sentence a person convicted of a
16 violation of Section 12-19, 12-21, or 16-1.3 of the Criminal
17 Code of 1961 (i) to an impact incarceration program if the
18 person is otherwise eligible for that program under Section
19 5-8-1.1, (ii) to community service, or (iii) if the person is
20 an addict or alcoholic, as defined in the Alcoholism and Other
21 Drug Abuse and Dependency Act, to a substance or alcohol abuse
22 program licensed under that Act.

23 (o) Whenever a person is convicted of a sex offense as
24 defined in Section 2 of the Sex Offender Registration Act, the
25 defendant's driver's license or permit shall be subject to
26 renewal on an annual basis in accordance with the provisions of

1 license renewal established by the Secretary of State.
2 (Source: P.A. 94-72, eff. 1-1-06; 94-556, eff. 9-11-05; 94-993,
3 eff. 1-1-07; 94-1035, eff. 7-1-07; 95-188, eff. 8-16-07;
4 95-259, eff. 8-17-07; 95-331, eff. 8-21-07; 95-377, eff.
5 1-1-08; 95-579, eff. 6-1-08; 95-876, eff. 8-21-08; 95-882, eff.
6 1-1-09.)

7 Section 99. Effective date. This Act takes effect upon
8 becoming law.